IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 2102 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

Nos. 1 to 5 No

JASUBHAI NATHABHAI

Versus

MANILAL KANJIBHAI MAKWANA THROUGH HERIS

Appearance:

MR RN SHAH for Petitioner

MR KC SHAH for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 03/08/98

ORAL JUDGEMENT

This is tenant's revision under section 29(2) of the Bombay Rent Act.

The brief facts giving rise to this revision are that the deceased plaintiff Manilal Kanjibhai had let out the disputed accommodation to the present revisionist on

monthly rent of Rs.10/-. The rent from 1.9.1967 was alleged to be due from the defendant. Notice of demand dated 24.4.1972 was served on the tenant but he failed to vacate the premises and to pay the arrears of rent. In the same notice tenancy was also determined. The suit for eviction was filed on two grounds. Firstly, that the tenant was in arrears of rent exceeding six months which he failed to pay despite service of notice of demand. The second ground was that the premises was reasonably and bonafide required by the landlord for his personal use after retirement.

The suit was resisted by the tenant revisionist on the ground that he was not in arrears of rent exceeding six months and that the rent was paid to the landlord by money order which was accepted by him. Hence no rent exceeding six months was due from him. It was also denied that the premises was reasonably and bonafide required by the landlord for his personal use.

The Trial Court found that the tenant was not in arrears of rent for a period exceeding six months. It further found that the premises was not bonafide required by the landlord for his personal use. With these findings the suit was dismissed.

An appeal was preferred by the landlord. The Appellate Court agreed with the finding of the Trial Court that the tenant was not in arrears of rent for a period exceeding six months. It however, found that the premises was reasonably and bonafide required by the landlord for his personal use after his retirement. It also compared relative hardship likely to be caused to the landlord and the tenant in case decree for eviction was passed or refused to be passed. It found that the landlord will suffer greater hardship in case decree for eviction is refused. With this finding the suit for eviction was decreed. The tenant has now filed this revision.

So far as the finding regarding arrears of rent is concerned, it is concluded finding of fact recorded by the two Courts below. The Trial Court has referred to one money order coupon through which rent was accepted by the landlord. The lower Appellate Court has made reference to two money order coupons through which rent was remitted and was accepted by the landlord. First payment through money order was made for Rs.120/- on 14.1.1968 and then another sum of Rs.120/- was paid by money order to the landlord on 21.3.1970. The two Courts were therefore justified in holding that there was no

arrears of rent exceeding six months on the relevant date. The decree for eviction, therefore, could not be passed on this ground.

So far as the second ground is concerned the Trial Court and the Appellate Court gave non concurrent finding. The Trial Court found that the requirement of the landlord was neither bonafide nor reasonable. The Appellate Court found that the requirement of the landlord was bonafide and reasonable. It is thus question of appreciation of evidence and if two views are available the High Court will be reluctant in substituting its own view emerging from the evidence on record. Even on non concurrent finding the High Court will be reluctant in the revision of this nature to interfere with the finding of the lower Appellate Court. Simply because the Trial Court has given different finding, the reversal of Appellate Court's finding is hardly called for.

From the perusal of the judgment of the Trial Court it appears that the Trial Court itself gave self contradictory finding. It clearly observed that the plaintiff was serving in the school as Peon. He was likely to retire. He was allotted quarter by the school authorities. After retirement he was to vacate the said quarter. During the pendency of the suit the plaintiff retired. He made some alternative arrangement to shift to his relative Arsi. His case was that he was accommodated by one of his relatives as licensee. There is no evidence that the landlord owns other accommodation or is in possession of some rented accommodation after retirement.

In para 18 of the judgment the Trial Court observed ".... I doubt whether one could ever expect a better, stronger and more genuine case than the present one for sustaining the ground of bonafide and reasonable requirement of the plaintiff..." Inspite of this observation the Trial Court entered into controversy which was never raised by the tenant. The Trial Court made out a third case for the parties. It was the case of the plaintiff that he shifted his family to his relative Arsi and was accommodated by him as licensee and he was not paying any rent or licence fee to Arsi. Still on mere surmises and conjectures the Trial Court entered into unnecessary exercise ignoring the material on record and relying upon uncalled for presumption held that the plaintiff was occupying portion of the accommodation of Arsi as tenant. This finding was not given on any cogent evidence, rather it was a case of no evidence that the

plaintiff was occupying accommodation of Arsi. as tenant. Still the Trial Court presumed and held that because the plaintiff occupied the said premises of Arsi for number of years it must be inferred that he must be paying the rent. No such presumption or inference of fact could legally be drawn in the absence of any evidence on the point. Thus, if the Trial Court proceeded to determine the case in premises not set up by the parties the lower Appellate Court was justified in disturbing such inference based on surmises. If the Trial Court found that it was a case of bonafide and reasonable requirement of the landlord it should have considered the next question viz.relative hardship to the parties arising out of the decree for eviction.

It was admitted by the tenant revisionist that in the course of employment the plaintiff was allotted house by the school authorities. The plaintiff's evidence is that after retirement he had handed over possession of the said quarter to the school authorities. This stand of the plaintiff finds corroboration from the admission of the defendant in one of the reply notices sent by him to the plaintiff.

The lower Appellate Court has rightly considered the financial status of the landlord. After retirement he is getting Rs. 120/- p.m. as pension. He is also getting Rs.100/-p.m. from employment in some mill. His wife is getting Rs.5/-p.m. With this meagre salary of Rs.225/- or so the landlord had to support his large family consisting of himself, his wife, four daughters and son. If the landlord owns a house he cannot be compelled to search for rented house beyond his means. The family members of the tenant are also numbering six. Both the Courts found that the financial condition of both the parties is not sound. However, the tenant never made any attempt to search suitable accommodation for himself. Whenever decree for eviction is passed against the tenant he is likely to suffer some hardship. However, there is no evidence from the side of the tenant that after decree was passed by the lower Appellate Court he made efforts to search out alternative accommodation for himself. Carelessness and lack of interest in prosecuting the present revision is exhibited from the fact that he is absent today. Despite the revision of the list four times none has appeared on his behalf. It is not for the landlord to find out suitable accommodation for the tenant, rather it is for the tenant to find out suitable accommodation for him. There is no evidence from him that he made efforts or sincere efforts to find out suitable accommodation for himself. As such

greater hardship will certainly be caused to the landlord in case decree for eviction is refused.

The hardship compared by the Trial Court also proceeded on erroneous footing. The lower Appellate Court was therefore, justified in reversing the decree of the lower Court. There is no merit in the revision. The judgment and decree of the Appellate Court does not call for any interference in this revision. In the result, the revision is dismissed. Parties shall bear their own cost.

Sd/-
(D.C.Srivastava, J)

m.m.bhatt